

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 9)
of the Communication's Act)Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

MD Docket No. 94-19

To: The Commission

**COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL**

The Utilities Telecommunications Council (UTC) hereby submits its comments on the Federal Communications Commission's Notice of Proposed Rulemaking (NPRM), released March 11, 1994, in the above-referenced docket. UTC generally supports the FCC's assessment and collection procedures as they apply to private radio services, but urges the FCC to modify these rules to reduce where possible the administrative burden on itself and applicants and to clarify its methodology for the assessment of regulatory fees on nationwide applicants in the 220-222 MHz band.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. Approximately 2,000 such companies are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers, to small rural

No. of Copies rec'd 045
List A B C D E

electric cooperatives and water districts serving only a few thousand customers. UTC is also the Federal Communications Commission's (FCC) certified frequency coordinator for the Power Radio Service. UTC's members utilize communications services subject to the proposed regulatory fees; therefore, UTC has an interest in this proceeding.

In the NPRM, the FCC proposes to implement Section 9(b)(1)(C) of the Communications Act of 1934, as amended (the Act)^{1/}, by adopting regulations pertaining to the assessment and collection of regulatory fees. These fees are intended to recover the costs incurred in carrying out the FCC's enforcement, policy and rulemaking activities, user information services and international activities.

UTC supports the FCC's proposal not to revise the fee schedule for fiscal year 1994.^{2/} UTC agrees with the FCC's conclusion that the statutory scheme does not envision that the FCC would exercise its authority to amend the fee schedule established in the Act for 1994. The inclusion of the fee schedule for 1994 itself, as well as other language in the Act, clearly demonstrates that Congress did not intend for the FCC to revise the fee schedule so soon after its enactment.

^{1/} 47 U.S.C. §159(b)(1)(C).

^{2/} NPRM at Para. 10.

UTC's supports the FCC's proposal to apply its existing definition of "governmental entities," found in Section 1.1112(f) of the FCC's Rules, to the Act's provision exempting such entities from the payment of regulatory fees.^{3/} Section 1.1112 (f) of the FCC's Rules exempts from filing fees "governmental entities," defined as:

any state, possession, city, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.^{4/}

Application of the same definition to the regulatory fee exemption will eliminate the potential for confusion and will ensure that the same public interest goals that prompted the exemption from filing fees are satisfied by the exemption from regulatory fees.

UTC also supports the FCC's proposal to require no additional certification or other filings for entities that have already established their governmental status.^{5/} UTC, however, urges the FCC to clarify that such additional certification is unnecessary in any case for governmental applicants for private radio services as the applications for these services already require applicants to indicate whether they are government

^{3/} NPRM at Para. 12.

^{4/} 47 C.F.R. §1.1112(f).

^{5/} NPRM at Para. 13.

entities. The filing of an additional certification would be unnecessary and merely result in additional paperwork for the entities and administrative burden for the FCC.

In applying the statutory provisions which exempt nonprofit entities from the filing of regulatory fees, the FCC proposes to exempt all entities that receive nonprofit, tax exempt status under section 501 of the Internal Revenue Code.^{6/2/} UTC supports this proposal, noting that the exemption of all 501 entities would serve to protect these nonprofit organizations from costly fees which could threaten their economic viability. Furthermore, as the FCC correctly notes, the exemption of all 501 entities reflects the Congressional intent on this matter which was clearly demonstrated by the modification of the original language that had restricted the exemption to only 501(c)(3) entities.

UTC supports the FCC's attempt to avoid unnecessary paperwork by using FCC files to identify non-profit entities where possible.^{8/} UTC urges the FCC to further reduce unnecessary paperwork by requiring 501(c)(3) entities to provide only their employer identification number, as this would: (1) be

^{6/} 47 U.S.C. §158(d)(1)(A).

^{2/} NPRM at Para. 15.

^{8/} NPRM at Para. 16.

sufficient for the FCC to verify these entities' tax status from IRS records^{9/}; (2) reduce the burden that would otherwise be imposed by requiring the filing of IRS Determination Letters; and (3) comply with the provisions of the Paperwork Reduction Act of 1980^{10/} which seeks to ensure that the paperwork obligations imposed on the public are not duplicative.

UTC supports the FCC's proposal to permit applicants to use one payment instrument to cover multiple standard regulatory fee payments and multiple applications for the same or different applicants.^{11/} This rule reduces the administrative burden, and attendant costs, of both the FCC and applicants by reducing the number of checks that must be drafted and processed. However, in the NPRM the FCC appears not to permit private radio licensees to enjoy these same benefits. Instead, the FCC states that "[s]ince small regulatory fees will be paid at the same time as application fees, our current application filing procedures requiring one instrument per application would apply."^{12/}

^{9/} According to a discussion with IRS staff, IRS Publication 78 provides a list of 501(c)(3) charitable organizations.

^{10/} 44 U.S.C. §3501.

^{11/} NPRM at Para. 38, Para. 98.

^{12/} NPRM at Para. 38, n.48.

UTC strongly urges the FCC to eliminate its one instrument per application rule. No justification is provided as to why private service applicants should not be given the same benefits as non-private applicants. In fact, it would seem that small payments, which are paid at the time of initial licensing or renewal, would be more easily collected through one instrument because fee intake staff could easily determine from the applications what the check covers. Furthermore, because many of UTC's members have large private communications systems and multiple licenses, the elimination of the one instrument per application requirement would greatly reduce the administrative burden associated with the drafting of multiple checks at license renewal time. UTC strongly urges the FCC to reconsider its one instrument per application rule and permit private and non-private users alike to use one instrument to file regulatory fees for multiple applications and/or applicants.

UTC supports the FCC's proposal to require the payment of small regulatory fees in advance for the term of the license and agrees that the payment of these fees should be required only when an initial or renewal application is filed.^{13/} However, UTC requests the FCC to provide licensees with the flexibility to file regulatory fees with applications for modifications. Currently, licensees filing applications for modifications receive new license expiration dates upon the grant of these

^{13/} NPRM at Para. 26.

applications. This saves the FCC considerable time and effort in having to review a renewal application for a license that has only recently been reviewed as part of an application for modification. Furthermore, this would permit some private radio licensees, particularly those with few licenses, to pay the regulatory fee at the time of modification, rather than having to prepare a renewal application and pay an additional filing fee.^{14/} Other licensees could pay only the filing fee with the modification application and retain the original license expiration date.

UTC supports the FCC's proposal to refund any advance payment of regulatory fees for applications which are not granted.^{15/} As noted above, the FCC requires the payment of small fees at the time of a new or renewal application in advance for the term of the license. If the FCC does not grant this application, there can be no justification for the retention of the fee to cover the costs of administering and enforcing an ungranted license.

Finally, UTC requests clarification of the proposed rules regarding the assessment of regulatory fees for applicants in the 220-222 MHz band. As a member of Utility Cooperative

^{14/} This would impose no additional administrative burden on the FCC as the original regulatory fee paid at the time of license grant or renewal would not be refunded.

^{15/} NPRM at Para. 43.

Communications Service (UCCS), UTC is an applicant for a nationwide 220-222 MHz license. UTC is concerned that application of the FCC's novel methodology for determining 220 MHz filing fees to the determination of regulatory fees would unfairly burden nationwide applicants in the 220-222 MHz band.

Filing fees for 220-222 MHz nationwide applicants were assessed on each frequency, not each station site. The FCC justified this procedure by assigning a separate call sign to each frequency at each site in the nationwide system. (Normally, call signs in the private radio services are granted on a per-site basis.) Therefore, for each site 5 or 10 filing fees were imposed depending on whether the application was for a 5- or 10-channel system. The application of this methodology to regulatory fees would be unequitable. A 5-channel nationwide system, for instance, would require a regulatory fee of \$56,000^{16/} which would result in a fee of \$80 per site per year. Other services which allow "high quality voice or digital communications between vehicles or to fixed stations"^{17/} have

^{16/} The regulatory fee would be the product of the license term (10 years) times the number of channels (5 or 10) times the minimum number of station sites (70) times the regulatory fee (\$16 per license). For a 5-channel system, the regulatory fee would be \$56,000, while 10-channel system would require a regulatory of \$112,000.

^{17/} NPRM at Para. 50. The FCC describes SMR and 220-222 MHz services as permitting high quality voice or digital communications, but differentiates between these private services and public services such as cellular in the imposition of regulatory fees.

lower regulatory fees. For example, the regulatory fee for cellular licenses is based on the number of subscribers and is set at \$60 per 1000 subscribers or about six (6) cents per subscriber.^{18/} By comparison, the regulatory fee for a 220-222 MHz nationwide license would be \$80 per site for a 5-channel system under the same methodology used for determining application filing fees. With a potential mobile loading of about 500 mobiles per site (5 channels times 100 mobiles per channel), the per-user charge would be about 16 cents per year; about three times as much as the cellular fee. This inequity is even more apparent with regard to the non-commercial nationwide 220-222 MHz licenses which will be used to support internal business purposes and would not be providing service to subscribers for profit. Therefore, UTC urges the FCC to clarify that regulatory fees for 220-222 nationwide licenses will apply on a per-site basis.

Conclusion

UTC generally supports the FCC's proposed rules as they apply to the assessment and collection of regulatory fees for private radio services. UTC requests that the FCC reduce the administrative burden on itself and on applicants by: (1) eliminating the one instrument per application rule; and (2) permitting licensees to choose whether to pay regulatory fees at the time of an application for modification and receive a new

^{18/} NPRM at Para. 79.

license expiration date or to pay only a filing fee with the application and retain the original expiration date. UTC also urges the FCC to clarify its rules regarding fees for the 220-222 MHz band to ensure that nationwide licensees do not bear significantly more financial burden than licensees operating similar systems.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council requests the Federal Communications Commission to take action in accordance with the views expressed herein.

Respectfully submitted,

**UTILITIES TELECOMMUNICATIONS
COUNCIL**

By: 

Jeffrey L. Sheldon
General Counsel

By: 

Thomas E. Goode
Staff Attorney

Utilities Telecommunications
Council
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036
(202) 872-0030

April 7, 1994